

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 205 Juvenile Diversion Programs
SPONSOR(S): Criminal Justice Subcommittee, Ahern and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	Aziz	White
2) Justice Appropriations Subcommittee	15 Y, 0 N	Welty	Gusky
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 985, F.S., authorizes four different types of juvenile diversion programs: Juvenile Civil Citation Programs; Prearrest and Postarrest Diversion Programs; Neighborhood Restorative Justice Programs; and Community Arbitration Programs. Pursuant to s. 943.0582, F.S., a juvenile who successfully completes a prearrest or postarrest diversion program may seek expunction of his or her nonjudicial arrest record for a nonviolent misdemeanor offense if the agencies establishing the program have authorized such expunction. If so authorized, a juvenile seeking expunction must submit an application to the Florida Department of Law Enforcement (FDLE) and pay a \$75 fee, unless the fee is waived by the FDLE. A juvenile is authorized to deny the existence of an expunged record except for purposes of determining his or her eligibility for a diversion program, when the record is sought as part of a criminal investigation, or when the subject of the record is a candidate for employment with a criminal justice agency.

The bill amends s. 943.0582, F.S., to change the above-described expunction process so that:

- Expunction is available for any of the diversion programs established in ch. 985, F.S., rather than only prearrest and postarrest diversion programs.
- The section of law ensures a one-time expunction for *any* first-time misdemeanor when the program is successfully completed. It is no longer necessary for the agencies operating the diversion program to generally authorize expunctions for the program.
- The diversion program is required to submit to the FDLE a certification for expunction when a juvenile successfully completes the program under specified circumstances, instead of requiring the juvenile to apply for expunction.
- The FDLE cannot assess a fee for the expunction.
- A juvenile may lawfully deny or fail to acknowledge successful participation in a diversion program and expunction for a first-time misdemeanor for purposes of criminal justice agency employment.

Additionally, the bill provides that diversion programs must submit data regarding participants and nonparticipants in diversion programs to the Department of Juvenile Justice (DJJ), which is required to compile and publish the data on its website.

The bill has an indeterminate fiscal impact on the FDLE, the DJJ and organizations that operate juvenile diversion programs. The bill does not appear to have a fiscal impact on local governments.

The bill is effective July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Diversion - Generally

In its most general usage, diversion means that an individual is placed on a justice track that is less restrictive and affords more opportunities for rehabilitation and restoration.¹ Diversion may result in the avoidance or dropping of a charge and dismissal of a case completely.² Florida currently provides several options for a person who is alleged to have committed specified criminal offenses to participate in diversion, including pretrial intervention programs and pretrial diversion programs.³

Juvenile Diversion Programs

Juvenile Prearrest and Postarrest Diversion Program

Juvenile prearrest and postarrest diversion programs (diversion programs) are nonjudicial alternatives used to keep less serious juvenile offenders from being processed through the traditional juvenile justice system.⁴ These programs are intended to intervene at an early stage of delinquency, decrease subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.⁵

Section 985.125, F.S., authorizes a law enforcement agency or school district, in collaboration with the state attorney, to establish a diversion program for juveniles charged with criminal offenses. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for up to 90 days.⁶

The diversion program is authorized to provide for the expunction of a juvenile's arrest record upon successful completion of the diversion program.⁷ Each diversion program must have an agreement among the establishing agencies to provide for such expunction.⁸ Expunction of a criminal history record resulting from a diversion program is obtained in accordance with s. 943.0582, F.S.

Juvenile Civil Citation Program

The Juvenile Civil Citation Program (JCCP), created by s. 985.12, F.S., gives law enforcement an alternative to taking juveniles who have committed non-serious delinquent acts into custody while ensuring swift and appropriate consequences.⁹ JCCPs are open to juveniles with no offense history

¹ Center for Health and Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (December 2013), pg. 6 and 8, available at

<http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report%20web.pdf> (last visited March 28, 2017).

² *Id.*

³ Section 948.08, F.S., provides for pretrial intervention programs.

Pretrial Diversion (PTD) is a deferred prosecution program for selected misdemeanor/misdemeanor DUI offenders

⁴ "Probation and Community Intervention," DJJ 2011 Comprehensive Accountability Report,

<http://www.djj.state.fl.us/research/reports/car> (last visited on March 2, 2017).

⁵ *Id.*

⁶ s. 985.125(2), F.S. Additionally, if the juvenile fails to comply with the requirements of the program, the state attorney may notify Department of Highway Safety and Motor Vehicles in writing to suspend their driver's license for up to 90 days.

⁷ s. 985.125(3), F.S.

⁸ *Id.* Juveniles who successfully complete diversion programs that do not expressly authorize expunction pursuant to s. 943.0582, F.S., are not eligible for expunction under this section.

⁹ s. 985.12(1), F.S.

who admit to committing a qualifying misdemeanor.¹⁰ Law enforcement agencies are not required to issue civil citations and there is variation in current use of JCCPs among agencies and counties.¹¹ Under a JCCP, a law enforcement officer (LEO) has discretion to:

- Issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents; or
- Arrest the juvenile, conditioned upon the LEO providing written documentation as to why an arrest was warranted.¹²

The above-mentioned options are available to a LEO who comes into contact with a juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.¹³

If a civil citation is issued under a JCCP, the LEO must assess not more than 50 community service hours and require participation in intervention services appropriate to identified needs of the juvenile. The statute requires the LEO issuing the civil citation¹⁴ to advise the juvenile of his or her option to refuse the citation and instead be arrested and referred to a Department of Juvenile Justice (DJJ) intake office.¹⁵

A juvenile that elects to participate in the JCCP must report to a community service performance monitor within seven working days after the date of issuance of the civil citation, and must complete the work assignment at a rate of not less than five hours per week.¹⁶ Upon completion of the program, the agency operating the JCCP must report the outcome to DJJ.¹⁷

Neighborhood Restorative Justice Program

The Neighborhood Restorative Justice Program (NRJP), created in s. 985.155, F.S., allows for the deferred prosecution of a juvenile. In order to be eligible for NRJP, a juvenile must be a first-time, nonviolent offender.¹⁸ Under NRJP, the state attorney may establish a center to operate a deferred prosecution program in which the Restorative Justice Board may consider alternative sanctions for the juvenile. The Restorative Justice Board consists of two appointees from the state attorney, two from the public defender's office, and one appointed by the chief judge of the circuit.¹⁹ When an offender is referred to NRJP by the state attorney, the board meets within 15 days of receiving the case and holds a meeting to decide what sanctions to impose.²⁰ The parent or guardian of the child is required to participate and the victim or victim's representative may attend.²¹ Sanctions from the board may include making restitution to the victim or community, performing work for the victim or community, or attending counseling or education services. Failure to agree to the sanctions or failure to complete the sanctions may result in the state attorney filing the matter with the juvenile court. However, if the

¹⁰ Misdemeanors involving sex or firearm offenses are currently exempt from civil citation under Department of Juvenile Justice's guidelines. DJJ, *Civil Citation Model Plan, A Guide to Implementation*, DJJ (October 2015) <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-model-plan.pdf?Status=Master&sfvrsn=4> (last visited March 2, 2017).

¹¹ *Id.*

¹² s. 985.12, F.S.

¹³ *Id.*

¹⁴ If the LEO issues a civil citation, a copy must be provided to the county sheriff, state attorney, the appropriate DJJ intake office or the community performance monitor designated by DJJ, the parents or guardian of the youth, and the victim. s. 985.12(1), F.S.

¹⁵ The youth has the right to opt out of the CCP and be referred to a DJJ intake office at any time before completion of the work assignment. s. 985.12(6), F.S.

¹⁶ s. 985.12(4), F.S.

¹⁷ s. 985.12(1), F.S.

¹⁸ "First-time, nonviolent juvenile offender" means a minor who allegedly has committed a delinquent act or violation of law that would not be a crime of violence providing grounds for detention or incarceration and who does not have a previous record of being found to have committed a criminal or delinquent act or other violation of law. s. 985.155(1)(c), F.S.

¹⁹ s. 985.155(3), F.S.

²⁰ s. 985.155(4), F.S.

²¹ *Id.* Failure of the parent or guardian to participate in the program may be considered an act of neglect under s. 39.01, F.S.

juvenile completes the sanctions imposed, then the criminal offense committed by the juvenile does not show up as a conviction, and does not disqualify the juvenile in any civil service application or appointment.²²

Community Arbitration

The Community Arbitration Program, created in s. 985.16, F.S., allows a juvenile who has committed a misdemeanor or certain third degree felonies²³ to face an arbitrator or arbitration panel²⁴ instead of being prosecuted in juvenile court. A law enforcement officer may issue a complaint against a juvenile that includes a recommendation for community arbitration.²⁵ Each offense is given a point value, including:

- Two points for a misdemeanor of the second degree,
- Four points for a nonviolent misdemeanor of the first degree,
- Six points for a misdemeanor of the first degree involving violence, and
- Eight points for eligible third degree felonies.²⁶

While there is no limit to the amount of times a juvenile can take part in this program, once a juvenile receives 12 points worth of referrals, he or she is no longer eligible.²⁷ The community arbitrator or arbitration panel may review the complaint, hear testimony from witnesses, and examine other evidence.²⁸ The arbitrator or panel may then recommend a wide array of options, such as issuing a warning to the juvenile and recommending that the state attorney not prosecute, referring the juvenile to a safety and education program related to children, or order restitution.²⁹ If the juvenile fails to complete the terms required by the arbitrator or panel, the case may be referred back to the state attorney for possible filing in juvenile court.³⁰

Juvenile Diversion Program Expunction

Chapter 943, F.S., in part, sets forth procedures for expunging³¹ and sealing criminal history records.³² Under s. 943.0582, F.S., the Florida Department of Law Enforcement (FDLE) is required to expunge

²² s. 985.155(7)(a), F.S.

²³ A juvenile who has been the subject of at least one prior adjudication or adjudication withheld for any first or second degree felony offense, any third degree felony offense involving personal violence, grand theft auto, or the use of a weapon shall not be eligible for community arbitration. s. 985.16(2)(c), F.S.

²⁴ A community arbitrator or member of a community arbitration panel must be trained or experienced in juvenile causes and be either a graduate of a law school or hold a degree in behavioral social work and possess the temperament necessary to deal with cases involving children. s. 985.16(3)(b), F.S.

²⁵ s. 985.16(4)(a), F.S.

²⁶ s. 985.16(2)(d), F.S.

²⁷ *Id.*

²⁸ s. 985.16(5), F.S.

²⁹ s. 985.16(6)(a), F.S.

³⁰ S. 985.16(6)(d), F.S.

³¹ Section 943.045(16), F.S., defines “expunction of a criminal history record” to mean the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record if an order to expunge is vacated by a court of competent jurisdiction. The definitions provided for in s. 943.045, F.S., apply to ss. 943.045 through 943.08, F.S.

³² Section 943.045(6), F.S., defines “criminal history record” to mean any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(5), F.S., defines “criminal history information” to mean information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. Criminal history information does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

the nonjudicial arrest record of a juvenile **for a nonviolent misdemeanor**³³ if the juvenile has successfully completed **a diversion program under s. 985.125, F.S.**, and:

- Submits a signed copy of FDLE's application for diversion program expunction;³⁴
- Submits the application no later than 12 months after completion of diversion program;
- Submits an official written statement from the state attorney for the county in which the charges originated certifying that:
 - He or she has successfully completed that county's diversion program;
 - Participation in the program is based on an arrest for a nonviolent misdemeanor; and
 - He or she has not otherwise been charged by the state attorney with or found to have committed any criminal offense or comparable ordinance violation;
- Participated in a diversion program that expressly authorizes or permits such expunction;
- Participated in a diversion program based on an arrest for a nonviolent misdemeanor that is not considered an act of domestic violence as that term is defined in s. 741.28, F.S.;³⁵ and
- Has never, prior to filing the application for expunction, been charged by the state attorney with or been found to have committed any criminal offense or comparable ordinance violation.³⁶

Additionally, the FDLE is authorized to charge a \$75 processing fee for each request received for prearrest or postarrest diversion program expunction.³⁷

Section 943.0582(2)(a), F.S., defines "expunction" to have the same meaning and effect as in s. 943.0585, F.S.,³⁸ except in two circumstances:

- FDLE may only make available an expunged juvenile diversion criminal record to:
 - Criminal justice agencies³⁹ for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs;
 - When the record is sought as part of a criminal investigation; or
 - When the subject of the record is a candidate for employment with a criminal justice agency; and
- The records that are maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction must be sealed⁴⁰ instead of destroyed.

³³ Section 943.0582(2), F.S., defines "nonviolent misdemeanor" as including simple assault or battery when diversion expunction is approved in writing by the state attorney in the county in which arrest occurred. Under current law, a juvenile who enters and successfully completes a diversion program for any felony offense or a violent misdemeanor is not eligible for expunction.

³⁴ The application is required to be on the prescribed FDLE form and "signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying." s. 943.0582(3)(a), F.S.

³⁵ An act of "domestic violence" is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. s. 741.28, F.S.

³⁶ s. 943.0582, F.S. It should be noted that a juvenile who obtains an expunction under this section is not prevented from petitioning for expunction or sealing of a later criminal history record under s. 943.0585, F.S. and 943.059, F.S., provided he or she is otherwise eligible.

³⁷ s. 943.0582(4), F.S. (such fee is placed in the FDLE Operating Trust Fund but may be waived by the executive director.).

³⁸ Section 943.0585(4), F.S., provides that when a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE is required to retain expunged records. Records that have been expunged are confidential and exempt from the public records law and it is a first degree misdemeanor to divulge their existence. Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment, petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution. A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

³⁹ The term "criminal justice agency" is defined to mean a court, the FDLE, the DJJ, the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect, and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. s. 943.045(11), F.S.

⁴⁰ As the term is used in s. 943.059, F.S.

Effect of the Bill

Expunction

The bill changes the requirements for a diversion program expunction by amending s. 943.0582, F.S, to allow juveniles who have successfully completed a diversion program for **any** misdemeanor offense, rather than only a nonviolent misdemeanor offense, to have their nonjudicial arrest records expunged. The bill defines eligible “diversion programs” as the JCCP under s. 985.12, F.S., Prearrest and Postarrest Diversion Programs under s. 985.125, F.S., the NRJP under s. 985.155, F.S., the Community Arbitration Program under s. 985.16, F.S., or any program to which the juvenile was referred to by a state attorney under s. 985.15(1)(g), F.S.;⁴¹ thereby, expanding the current expunction statute’s application to include all juvenile diversion programs, rather than only Prearrest and Postarrest Diversion Programs.

In newly created, s. 985.126, F.S., the bill requires diversion programs, as defined above, to submit a certification for expunction of a child’s nonjudicial arrest record to the FDLE when the child successfully completes the program for a first-time misdemeanor offense and has not otherwise been charged by the state attorney with, or been found to have committed, a criminal offense or comparable ordinance violation. The bill also repeals the FDLE’s authority in s. 943.0582(4), F.S., to charge a \$75 fee for an expunction. These changes by the bill eliminate current law’s requirement that the child submit the application and pay a \$75 fee, unless waived by the FDLE.

The bill requires the FDLE in s. 943.0582(3), F.S., to expunge a juvenile’s nonjudicial arrest record if the minor has never previously received an expunction under the section and the diversion program submits a certification for expunction on a form prescribed by the DJJ. This change ensures that a one-time expunction is available under the section; whereas, under current law, the availability of such expunction depends on whether the agencies establishing a prearrest or postarrest diversion program under s. 985.125, F.S., have authorized expunction.⁴²

The bill also provides in ss. 943.0582(2)(b) and 985.126(4), F.S., that a child who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program, as well as an expunged nonjudicial arrest record, unless the inquiry is made by a criminal justice agency for purposes of:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision under s. 985.15, F.S.

The bill deletes current law’s requirement that a juvenile expunged record be made available when the juvenile is a candidate for employment with a criminal justice agency.

Finally, the bill repeals s. 985.125(3), F.S., to conform the section to the changes discussed above.

Data Collection

In newly created s. 985.126(1)(b), F.S., the bill requires all diversion programs to provide data to the DJJ. For each child who participates in the program, the data must include:

- The race, ethnicity, gender, and age of the child;
- The offense committed with citation to the specific law establishing the offense; and
- The judicial circuit and county in which the offense was committed and the law enforcement agency that had contact with the child for the offense.

In addition to data on diversion program participants, each diversion program must submit data on children who are eligible for the diversion program, but who, instead, are referred to DJJ, provided a

⁴¹ Under s. 985.15(1)(g), F.S., a state attorney, in a juvenile delinquency case, may “[r]efer the child to a diversionary, pretrial intervention, arbitration, or mediation program, or to some other treatment or care program if such program commitment is voluntarily accepted by the child or the child’s parents or legal guardian.”

⁴² See ss. 943.0582 and 985.125(6), F.S.

notice to appear, or arrested. The data regarding the children who did not participate must contain all of the information required for those juveniles who did participate, as well as information on whether the child was offered the opportunity to participate in the diversion program. If the opportunity was not offered, the diversion program must provide the reason for declining to make the offer. If the child was offered the opportunity, the diversion program must indicate whether the child or his or her parent or legal guardian declined to participate in the program.

The DJJ is required to compile the data and publish it on its website in a sortable format based on judicial circuit, county, law enforcement agency, race or ethnicity, gender, age, and offense committed.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0582, F.S., relating to diversion program expunction.

Section 2. Amends s. 985.125, F.S., relating to prearrest or postarrest diversion programs.

Section 3. Creates s. 985.126, F.S., relating to diversion programs.

Section 4. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Department of Law Enforcement currently has the authority to charge a \$75 fee for a request to expunge a juvenile's arrest record if the juvenile has participated in a prearrest and postarrest diversion program. The FDLE reports that since July 1, 2016, the Commissioner has waived the collection of this fee.⁴³ As such, removing the authorization to assess the fee will have no impact on state revenues.
2. Expenditures: Indeterminate, but it is anticipated that the FDLE will absorb any additional expenditures within existing resources.

The bill's reporting requirements may increase the expenses of the Department of Juvenile Justice. The impact is indeterminate, but expected to be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

- D. FISCAL COMMENTS:** The bill requires many entities and organizations to report data to DJJ, even though these entities have no relationship with the department. While many diversion programs have contracts with DJJ and would therefore be contractually required to submit data for the purpose of

⁴³ Email from Ronald E. Draa, Jr., Director of External Affairs, Department of Law Enforcement, March 1, 2017 (on file with House of Representatives, Justice Appropriations Subcommittee).

payment, entities without a contractual relationship with the department may experience an indeterminate fiscal impact to collect and report information to the DJJ.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY: The bill requires the FDLE to adopt rules for the expunction of a nonjudicial record of the arrest of a minor who has successfully completed a diversion program for a misdemeanor offense.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the original bill only made substantive changes to s. 985.12, F.S., relating to civil citation programs. The CS does not amend s. 985.12, F.S., and, instead, includes: expansion of the diversion program expunction process so that it is available for all diversion programs and all first-time misdemeanors; elimination of the expunction application and fee requirements currently placed on a juvenile participant in a diversion program; and creation of data collection requirements for all diversion programs.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.